Mr. FINNEY. Does not the complexity of this problem, sir, involve the nonnuclear side of the problem, the discrimination, the electronics, the radio blackout and so on, rather than the warhead and its effects?

Dr. TELLER. It is true. It involves the nonnuclear side. It also involves the nuclear side, and it involves the interaction between these two, because when a nuclear blast has blinded your radars, your radars won't work, and you have to find out in what way your radars, your detection systems, your tracking systems will be influenced by this nuclear surrounding. This is what you have to find out and many other similar things.

Mr. SHACKFORD. Dr. Teller, earlier you mentioned that General Schreiver and General Power were especially opposed to this treaty, the men in charge of our ICBM's and the Strategic Air Force. But as I understand it, the Army is in charge and has the responsibility for building the anti-ICBM. Don't you find it unusual that the Army and the people who testified before the Senate Committee, representing the views of the Army, said that the laboratory people working on this did not feel that this treaty would inhibit the development of an anti-ICBM?

Dr. TELLER. I do.

Mr. SHACKFORD. The President at his press conference a few weeks ago said that he was afraid that nothing in the field of testing would satisfy you. He was speaking then particularly about the numbers of tests that should be conducted. Could you tell us what would satisfy you in the field of testing? If there were no treaty—if the treaty were defeated, how many tests, and how long these should go on?

Dr. TELLER. I don't want bigger explosives. I do want knowledge, knowledge that comes from testing, knowledge to be applied for our defense, knowledge to be applied for the peaceful use of nuclear exposives. In the way of increasing this badly needed knowledge, I think the more we have the better, and we can do it cleanly and without disturbing anybody in any serious sense. As far as knowledge is concerned, more and more will be needed.

Mr. HACKES. You have indicated, Dr. Teller, that you feel that the Russians are ahead of us in an antimissile weapon. Do you believe, as the Russians have claimed, that they have one now, and how extensive is their antimissile system?

Dr. TELLER. I do not know. I fear that they might have the knowledge by which to build one now, and I am almost sure that none of us really know whether they have it or not. This is what worries me.

Mr. SPIVAK. Dr. Teller, if you were a Senator listening to the conflicting testimony that has been advanced by distinguished scientists and military men, what would finally decide you to vote against or for the treaty?

Dr. TELLER. What would decide me to vote is my desire for peace and for the safety of the United States. What would decide me to vote is the possibility of opening up a real way to cooperate with our allies, to make the first step toward the lawful world government by the union of all free democracies. This is what this treaty inhibits, and that is why I would vote against it if I had a vote.

Mr. BROOKS. I am sorry to interrupt but I see that our time is up.

Thank you very much, Dr. Teller, for being with us.

[From the Columbia (S.C.) State, Sept. 15, 1963]

SECURITY ENDANGERED

(By W. D. Workman)

Self-preservation is a law of nations as well as a law of nature, and in this world of turmoil there can be no guarantee of self-preservation without military strength.

This sort of realization prompted the Senate Armed Services Committee a year ago to launch a thorough inquiry into the military implications of nuclear test bans. Today, the results of that study are at hand in the form of a printed report by the Preparedness Investigating Subcommittee—and those results give additional cause for concern over this Nation's subscribing to the pending nuclear test ban.

In designating the Preparedness Subcommittee, the chairman of the Armed Services Committee (Georgia's Senator RICHARD B. RUSSELL) named a group of Senators whose knowledge of and dedication to national security are well established. They are Senators JOHN STENNIS, of Mississippi, chairman; STUART SYMINGTON, of Missouri, HENRY M. JACKSON, of Washington, STROM THURMOND, of South Carolina, LEVERETT SALTONSTALL, of Massachusetts, MARGARET CHASE SMITH, of Maine, and BARRY GOLDWATER, of Arizona.

The Senators differed to some degree in their conclusions, and both SYMINGTON and SALTONSTALL indicated in the subcommittee's report their intention to vote for ratification of the present test ban treaty.

But these two, along with the rest of the subcommittee, accepted the validity and accuracy of the factual data acquired by the group in its extensive hearings. And it is that data which needs be brought to the attention not only of the Senate but of the American public.

LOSSES WE FACE

In summary, and without embodying such allied factors as foreign policy and international relations, the subcommittee made these pertinent statements:

"1. From the evidence, we are compelled to conclude that serious—perhaps even formidable—military and technical disadvantages to the United States will flow from the ratification of the treaty. At the very least it will prevent the United States from providing our military forces with the highest quality of weapons of which our science and technology is capable.

"2. Any military and technical advantages which we will derive from the treaty do not, in our judgment, counterbalance or outweigh the military and technical disadvantages. The Soviets will not be similarly inhibited in those areas of nuclear weaponry where we now deem them to be inferior."

Incidentally, the matter of arms superiority and inferiority is subject to grave question. The Senate Foreign Relations Committee, which has come up with a report favoring the test ban treaty, reports that "Soviet scientists presumably are confident that in many critical areas of nuclear weaponry they have achieved a rough technical parity with the United States."

Such a statement, far from being an argument in favor of the treaty, actually should argue against ratification. Senator STROM THURMOND, in a comprehensive September 11 speech opposing the treaty, made that point clear in voicing this conviction:

If the Soviets think, rightly or wrongly, they have achieved parity with us in nuclear weapons, then they have less reason than before to be deterred by our own strike capability.

This is especially true since President Kennedy and other American spokesmen have repeatedly pledged that this country would never make a first strike. Since we have voluntarily yielded that terrific advatnage to our enemies, they can concentrate on plans to neutralize our second strike capability with their first blow.

Here is an area in which their knowledge, gained through the testing of high yield, multimegaton bombs, already seems to be superior to ours.

THE SPECIFICS

The Preparedness Subcommittee, concerned over what seems to be a U.S. lag in the area of high yield experience, listed these eight disadvantages which are expected to stem from our involvement in a test ban treaty:

1. We will probably be unable to duplicate Soviet achievements in the technology of high yield weapons.

2. We cannot acquire needed data on the effects of high yield nuclear explosions in the atmosphere.

3. We would be unable to develop high altitude data required for the development of an antiballistic missile system.

4. We would find it impossible to predict the performance and reliability of our own antiballistic missile systems unless their guidance and control systems would be tested in the face of nuclear explosions.

5. We cannot verify the degree to which our second-strike missiles in their hardened underground sites would be operable in the face of high yield enemy strikes against our missile sites.

6. We would be unable to confidently determine proper design for our nose cones and warheads when the enemy opposes them with antimissile nuclear explosions.

7. The testing areas left open by the pending treaty would allow the Soviets to gain upon the United States in low yield knowledge while effectively preventing us from gaining on them in high yield areas.

8. By driving Soviet testing below surface (assuming Russian compliance) we would deprive ourselves of intelligence data which would be available to us from atmospheric Soviet tests.

WE RISK ALL

Proponents of the test ban treaty contend that political considerations carry advantages which more than offset the military disadvantages. But political gains cannot be weighted or predicted with the scientific accuracy which can be applied to military weaponry.

We know that the Soviets are our political opponents, with or without a test ban treaty. Our job is to maintain military superiority over them.

Ratification of the test ban treaty may make the task impossible.

TEST BAN TREATY: DR. JOHNSON DISCUSSES ISSUES

(EDITOR'S NOTE.—The News recently printed short discussions by several division members on the treaty for a limited ban on nuclear explosions. The subject is discussed at greater length in the following article, written by Dr. Montgomery H. Johnson, chief scientist, Research Laboratory, and one of the Nation's leading authorities on nuclear energy and theoretical physics.)

The treaty for a limited ban on nuclear explosions has been widely acclaimed as a first small step toward peace. It is really a step toward an honorable peace? Or is it a step toward submission to Soviet domination? The answer depends on what we gain or lose vis-a-vis the U.S.S.R.

The U.S.S.R. is a formidable antagonist. Starting long after us, her nuclear arms now excel ours in the 50-megaton class. She has never yielded an advantage except to a threat of force, most recently in Cuba. She has broken numerous treaties. Therefore, let us be sure we understand what the treaty means.

First of all, the treaty is not just a limited ban on nuclear testing. That is a misnomer. The treaty specifically prohibits nuclear explosions in the atmosphere, underwater, and in space for any purpose whatever. So long as the treaty binds us, we cannot use nuclear weapons to prevent aggression, to aid our allies in Europe, or to dig canals and harbors off the territorial United States. It is essential to know exactly the conditions under which we are bound by the treaty prohibitions. The conditions have not been made clear in public discussions.

Second, the U.S.S.R. can withdraw from the treaty with 90 day's notice and start atmospheric testing. The extensive series with which the U.S.S.R. broke the previous moratorium required 2 years' secret preparation. Thereby the U.S.S.R. gained 2 years' time in the development of nuclear weapons. We need to know the cost and feasibility of maintaining a 90-day readiness of an atmospheric test series in order to forestall more such gains.

Third, the U.S.S.R. could test clandestinely, a possibility open to the United States only under wartime conditions. Experts at Geneva agreed that a determined nation could secretly test a half megaton in space. Surveillance of atmospheric tests is not reliable below a certain yield and that limit may be raised by "clean" explosives. Can the U.S.S.R. develop a successful ballistic missile defense by clandestine testing? What potentialities in our ability to penetrate U.S.S.R. defenses and we denied by treaty prohibitions? What potentialities for our own defense and the protection of ICBM sites are we denied? The nuclear shield of the free world hinges on the answer to these questions.

Fourth, underground explosions are prohibited if radioactive debris falls outside national territory. Most ploughshare harbors and canals entail minor contamination of international waters and will be prohibited. Underground testing might be limited in a crippling way depending on a quantitative definition of "radioactive debris" nowhere stated. Of equal importance to treaty limitations is the support that will be given to the underground program. We learned in the last moratorium that the pace of nuclear weapon development is set by the pace of the experimental test program. Our ability under the treaty to maintain our nuclear arms relative to the U.S.S.R. depends on the vigor of the underground program.

These are important military and technical issues raised by the treaty. There are additional political issues, such as the effect of the treaty on he NATO alliance, that need discussion. When sober consideration has been given to these issues of national security, and only then, can we see if ratification of the treaty is a step toward an honorable peace or toward submission to U.S.S.R. domination.

THE STATE DEPARTMENT AND THE CONGRESS

Mr. McGOVERN. Mr. President, the Sunday New York Times magazine of yesterday, September 15, 1963, carries an important, thoughtfully written article by Mr. Fred Dutton entitled "The Cold War Between the Hill and Foggy Bottom."

The article centers on the problems and tensions which inevitably arise in the relations between the Congress and the State Department in the field of foreign policy.

Mr. Dutton is admirably qualified to discuss this vital sector of American public life. He is currently Assistant Secretary of State—a responsibility which he discharges with rare skill and intelligence. Mr. Dutton was previously a Special Assistant to President Kennedy—a position which gave him a keen understanding of the overall problems and responsibilities of the executive branch of our Government. Prior to his service in Washington, Fred Dutton established an enviable record as an adviser and assistant to Governor Brown of California.

It has been my privilege to observe Fred Dutton's service while we were both employed in the Executive Office of the President and since he has assumed his present important task in the State Department, I think he is a brilliant and highly able public official and a dedicated, ideally motivated citizen.

His article on the difficult problems of foreign policy as they relate to Congress and the State Department is well worth reading by the Members of Congress. I ask unanimous consent that the article be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

COLD WAR BETWEEN THE HILL AND FOGGY BOTTOM

(By Frederick G. Dutton)

WASHINGTON.—Whatever the shifting outlook in the rest of the world, one area of chronic tension and even occasional guerrilla warfare is the 2-mile gap in Washington between the Hill and Foggy Bottom—between Congress and the State Department.

In the gamut of American Government probably no greater antagonism has been generated over the years than that between the legislative branch and the Nation's foreign policy apparatus. The wrangling could be dismissed as just more governmental infighting if it did not involve some of the most critical and complex issues facing this country.

The view from Capitol Hill is reflected in almost any daily issue of the CONGRESSIONAL RECORD. Thus, on one typical day this year: An Ohio Congressman called for "a thorough fumigation of the State Department"; a Mississippi Senator held forth on an investigation of present Cuban policies; a New Jersey Representative charged this country's role in the Congo was "a sorry mess"; a Wyoming Senator claimed he saw indications of a secret agreement with Khrushchev; and a California Representative claimed that during 5 years of negotiation the United States "has been steadily losing its nuclear shirt." Over a dozen others spoke out with counsel or criticism aimed at the State Department.

The view of the legislative branch among many foreign affairs specialists, on the other hand, was summed up years ago in Henry Adams' comment: "The Secretary of State exists only to recognize the existence of a world which Congress would rather ignore." Or, as a Secretary of State once wrote, "We are so handicapped by the Senate and House that there is nothing more to do but follow a policy of makeshifts and half measures."

With such sharply contrasting attitudes between the Hill and Foggy Bottom, it is little wonder that misunderstandings and even occasional conflicts break out. "The miracle of the day," Secretary Rusk has observed, "is that we have moved in concert as well as we have."

As with nations, much of the real cause of the trouble has long since been obscured by semantics and stereotypes injected into problems in which they are irrelevant and invoked mostly to vent frustrations. Thus congressional complaints about world affairs are often dismissed by foreign-policy experts—in the press as well as in Government—as "uninformed," "opportunist," and "special interest motivated." The State Department is recurrently assailed as "weak kneed," "the victim of a plot," "the dupe of foreigners," and with other more lurid charges as old as politics.

So far neither side has given much recognition to the possibility that the other may be only trying to meet its functional responsibility—Congress to represent the diverse views and interests that make up our national society; the State Department to see that the hard complex facts and alternatives of policy concerning the rest of the world are fully considered in the ultimate decisions of the Government.

Increasingly, the main business of Washington is to reconcile this country's domestic and international interests. Since the relationship between Congress and the State Department is intimately involved in that business, there is serious need to dispel the encumbering nonsense.

The difficulties between the legislative branch and foreign-policy apparatus stem primarily from the fact that they are sharply different creatures. The State Department is analytical, tentative and cumbersome as it digests vast detail from far sources and cautiously gropes for the real meaning of what is happening in the world. A friendly but exasperated Senator recently described State as "rational, maybe, iffy at best." Its recommendations often recognize that only part of a problem can be influenced, and decisions are sometimes deliberately left implicit.

Congress, regularly faced with reelection, is assertive, often glandular, in its approach to the world. If one views the untidy legislative process of interrogation and advocacy as an effort to reach a consensus rather than as executive decisionmaking and recognizes that Congress can really affect the President's hold on foreign affairs only if wide support is enlisted, then what sometimes seems erratic or even perverse behavior may actually contain a creativeness, vigor and incisiveness often undernourished in the foreign-policy apparatus.

In addition to the inherent differences, international developments since World War II—including farflung security demands and the growing interdependence of the world—have widened and complicated contacts between the two, making a tolerable accommodation between them vastly more difficult.

More directly, the legislative branch has been injected into broad and continuing international policies through its control of the purse strings. Global efforts since World War II have relied on larger and larger appropriations for economic assistance, for military support and even for the State Department itself.

The principal foreign-policy legislation before the current session of Congress, the foreign-aid bill, highlights the tugging and hauling going on between the executive and legislative branches over their respective influence—a struggle between the constitutional authority over foreign affairs and that over appropriations—where this country's relations with the rest of the globe are concerned.

On immediate life-and-death decisions, the Chief Executive unquestionably holds the initiative. In circumstances such as the Cuban crisis last October and the Korean action in 1950, the President can and did determine the Nation's course without having to consult with Congress in advance of his decision.

But in the longer-range programs through which the United States can most consistently influence rather than just react to world developments, the two branches of Government still seem too often to be wrestling for control. Recent comments by Malcolm Moos, Richard Neustadt, and others about "the shift of great decisions to the executive offices and out of the parliamentary chamber" really apply more to pushbutton than long-haul problems.

The extent to which legislators court positive influence is reflected not only in their recurring forays into the Cuban problem, but also in the influential role Congress has played in this country's China policy for the last decade and a half.

The limits of legislative and executive reach in this field are indicated in Senator Fulbright's comment that "Congress has neither the authority nor the means to conduct American foreign policy, but it has ample power to implement, modify or thwart executive proposals."

The increasing attention of the legislative branch to international affairs is reflected quantitatively in the growing volume of congressional correspondence with the State Department. Thus, the number of letters from Senators and Congressmen on policy questions (wholly apart from passport inquiries and similar matters) has risen from about 7,600 in 1958 to 11,200 in 1960, to 18,600 in 1962. The trend this year indicates the volume will reach at least 23,000.

Likewise, the range of congressional committees taking up matters involving the State Department has steadily expanded beyond the Senate Foreign Relations and House Foreign Affairs Committees. The number of formal appearances by the Secretary of State before congressional committees now ranges between 25 to 35 a year. Last year, hearings involving other State Department officials rose to an alltime high—over 220. The volume of informal briefings and other congressional contacts with foreign policy experts is also growing.

Potentially, the development that could most significantly affect relations between the Hill and Foggy Bottom is not direct governmental activities but the rapid internationalizing of American politics. Not only presidential but congressional campaigns are focusing more and more on events abroad and this country's part in them.

While individual Senators and Congressmen struggle in their own behalf for a few inches of press coverage or 30 seconds of TV or radio exposure, their constituents are constantly bombarded with what is happening in the world and, by implication, how Americans should be concerned about it. Where public attention thus leads, elected officials are usually not far behind.

At the poll-taking level, Gallup has reported for years that the overriding preoccupation of most voters is the international situation. In last year's congressional campaign, for example, even before the Cuban crisis, he found that 55 percent of those surveyed considered war, peace, and international tensions to be the issues of greatest concern.

Far behind were the 11 percent reported to be most disturbed by the high cost of living and taxes, the seven percent most deeply concerned by unemployment, and the six percent then most alarmed by racial problems.

In 1962, one of the country's most durable political figures, Senator EVERETT MCKINLEY DIRKSEN, of Illinois, was reported by the press to have "opened his campaign for reelection last week with the loud pedal down on the theme that his role as Senate minority leader has armed him with a deep knowledge of foreign affairs. * * * He spoke of trips he had made to see foreign countries at first hand. He asserted that Laos was 'the corridor to control of all of the Far East,' and said that if Laos fell to the Communists, so in time would Japan, Taiwan, and the Philippines."

Although many in the Capitol still look at foreign policy as though it were an alien plague and contend that post offices and other Federal projects remain their districts' abiding interest, newspaper reports on President Kennedy's trip to South Dakota last summer to dedicate the Oahe Dam are worth noting. They observed that the biggest crowd response came not when he referred to what the project would do for the prairie country along the Missouri River, but when he referred to far larger Russian exploits and said he did not want to see the United States second to the Soviets in space, hydroelectric projects or anything else.

All these developments suggest that Members of Congress will concern themselves more and more with the international scene. In view of this, it is essential not only that any partisan differences over foreign policy be moderated, but that executive-legislative frictions be eased as well.

For better or worse and notwithstanding the recent suggestion by the chairman of the Senate Foreign Relations Committee that the President be given significantly enhanced authority over international affairs, no organic change is likely to come soon in the present separation and sharing of the principal governmental powers affecting foreign policy. The existing machinery is going to have to be made to work, however much it sometimes grates.

Thus, both sides need to face up to several hard facts.

First, many in the State Department must learn to accept that Congress has entered into the world as never before, and is there to stay. At the same time, many in Congress must recognize that explosive international problems cannot be handled with the sensationalism or certainty with which politics back home are sometimes treated. Neither can the Foreign Service be used as a favorite political punching bag without impairing its effectiveness.

In addition, substantially more and better contacts are needed between these two distinct, sometimes remote, groups if the underlying attitudes and semantics that breed much of the difficulty are to be straightened out.

In the last year a number of steps have been taken to narrow the gap between the two sides. The results thus far are mixed at best.

For Congressmen, weekly off-the-record briefings are now held by key State Department officials. (Usually only several dozen out of 435 Members have time, or are interested enough, to attend. Some who stay away claim they don't get the unequivocal answers they want.)

A substantially increased number of background papers and special studies of current problems are now sent regularly to congressional offices. ("A snow job," some members snort.) And special question-and-answer sessions have been organized for the administrative assistants to Senators and Congressmen. ("Pure propaganda," the Department's critics complain.)

Missionary work for Congress inside the State Department includes a number of innovations. Thus, three Members of the Senate discussed Congressional criticism of the Foreign Service with over 800 career officers in a closed-door session last summer. And a daily summary of foreign-policy comments in the CONGRESSIONAL RECORD is distributed throughout the department and to posts abroad.

The training of junior Foreign Service officers now includes a 2-week apprenticeship in a congressional office. And all career officers going to or returning from overseas are being urged not only to go and see their Congressmen but to go home and see the people there instead of just coming back to Washington while on leave in this country.

Far more is needed, however, than attention to underlying attitudes. The channels for substantive communication need to be improved so that the insistent critical faculty of Congress can be focused better, and the executive branch can have broader impact in making its case on the Hill. Senator HUBERT HUMPHREY's proposal that the Secretary of State should regularly be invited for a question period period before the full membership of each House is not new. But it recognizes the major communications problem that must be solved.

Even with improvements, however, it has to be recognized that the difficulties between Congress and the State Department will never disappear completely. The basic differences between the two make a considerable amount of contention inevitable.

As is so often the case with foreign policy perhaps the best that can be asked is that the frictions be kept within reasonable limits—and that will have to be worked out day by day, problem by problem, in the way the world's troubles must be attended to.

Finally, the interplay between Congress and the foreign-policy apparatus cannot be looked at alone but must be considered as part of the far broader question that Walter Lippmann raised at the start of this year: "How can democratic government, which was conceived and established in a very different era from this one, be made fit for the crises and the tempo and the conflicts of the present age?"

This is not just a question of constitutional arrangement, but of the capacity of the American people to relate themselves perceptively and with discretion to the rest of the world.

The personal and immediate way that many in Congress look at this problem was summed up recently for a group of Foreign Service officers by one of the younger Members of the House: "The question is not will Congress be responsible on international issues—but can we be, and get away with it?"

The remark reflects in a very practical way that the relationship between Congress and the State Department is not just a matter of whether two key parts of Government are working together with reasonable effectiveness. In the final anaysis, it is a question of how well the domestic and international attitudes and interests of American society are reconciled and brought to bear on the many tasks and opportunities that face us.

MEXICAN INDEPENDENCE DAY

Mr. HART. Mr. President, the 16th of September is traditionally celebrated by our Mexican brothers as Independence Day. Once again this year, joyful celebrations will commemorate the heroic struggle of the Mexican people for independence and mastery of their destiny. For 10 years, the Mexican people fought foreign domination armed with little more than their courage, fortitude and determination. But their victory was worth it: freedom and independence.

Today Mexico is indeed free, independent—a democratic nation rapidly progressing to achieve economic justice for all her citizens, to make available education and opportunity to the most remote village and to achieve a modern technology amid her rich ancient culture.

We have in our country many thousands of citizens of Mexican background. Certainly we in Michigan are proud and strengthened by the presence of many substantial citizens whose heritage is Mexican. These industrious citizens have enriched American life with their language, music and colorful customs. On the anniversary of Mexican independence, our American citizens of Mexican cultural heritage take pride in the achievements of their forefathers.

Mr. President, on this occasion, I am proud to extend my very good wishes to our Mexican friends south of the border and to join with all American citizens of Mexican background in celebrating this joyful day.

ADDRESS DELIVERED AT BIENNIAL CONVENTION, CENTRAL STATES REGION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHICAGO, ILL.

Mr. MORSE. Mr. President, yesterday, September 15, 1963, I delivered an address before the biennial convention, Central States region of the International Brotherhood of Teamsters. In the main, I explained several bills that I have introduced in the Senate involving the bonding provisions of the Landrum-Griffith law and proposal for amending our Federal code of criminal procedure.

I ask unanimous consent that my speech be printed at this point in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

REMARKS OF SENATOR WAYNE MORSE, OF OREGON BIENNIAL CONVENTION, CENTRAL STATES REGION, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHICAGO, ILL., SEPTEMBER 15, 1963

In these brief remarks, I want to cover several legislative issues that are, or should be, of interest to all Americans concerned for the personal liberties of American citizens and concerned for fair and equitable treatment of labor organizations. Over the years, I have given a great deal of time and attention in the Senate to the protection of personal liberties. It is a striking fact that for all one hears these days about alleged encroachments of the Federal Government and about alleged loss of personal initiative, these complaints are mostly made on behalf of the rights of property. The same people who make them have little interest or concern for the rights of persons that so occupied our Founding Fathers that they devoted nine amendments to them in the Constitution, calling them the Bill of Rights.

On June 27 of this year, I did my best to call to public attention a failure on the part of Congress to protect some of these rights of person. Because one of the "horrible examples," I used of abuse of these rights concerned the president of the Teamsters, there were many who cried that these were "Hoffa bills."

Well, that kind of opposition does not impress nor deter me. As a matter of fact, the major source of my research on them came from an outstanding legal scholar at the University of Chicago, Prof. Philip B. Kurland of the University of Chicago Law School. Professor Kurland was at work in the field of legal procedure long before the cases involving Jimmy Hoffa came along. But had Mr. Hoffa never been born, the same issues and the same threat to the personal, procedural rights of American citizens who become involved in Federal criminal proceedings would still exist.

The first of the bills I introduced on June 27 provides that no prosecutor, no defendant, and no attorney or spokesman for a defendant shall publish information not already filed with the court that might affect the outcome of a pending criminal proceedings. To do so would, under my bill, subject such individual to action for contempt of court.

We all know how common is the practice of "trial by newspaper." We all know that crime news attempts to associate or identify at least one suspect with every major crime reported. Legal scholars for years have documented the cases where newspapers have assumed the guilt of a person and have communicated that assumption to their readers, only to have the jury or the judge acquit the accused when all the evidence come in. We shall never know how many more people have been convicted, rather than acquited, because of prejudices created by press statements that could not be overcome by evidence.

That is not the kind of trial the Constitution seeks to guarantee. That is not a trial by an impartial jury which the sixth amendment prescribes for Federal criminal prosecutions.

One police reporter for a leading Washington newspaper called my office and later wrote an article about this proposal claiming that it infringed upon freedom of the press. As I pointed out in my Senate speech, the courts have often held that freedom of the press prevents measures from being taken that would assure an impartial trial. But my bill does not even infringe on what is printed: it only limits when it may be printed. The reporter who objected to it was not satisfied by the fact that once a trial is over, anything could be written about it. It was his case that part of freedom of the press includes the right to file a story tonight, before a competitor files it the next morning.

In my opinion, that is not freedom of the press, and it has no right to precedence over the constitutional rights that are supposed to surround criminal proceedings. For prosecutors to send out and have published the kind of material the Justice Department has put out prior to the Hoffa trials, is not even an issue of freedom of the press. It is simply an effort to influence opinion before the case is brought to trial. Such practices do not belong in our judicial system.

The second bill I introduced was designed to carry out another pledge of the sixth amendment, namely, that the accused shall have a speedy trial. What is "speedy" may be a matter of opinion. But when many of our States have undertaken to specify and define "speedy trial" it seems to me that some standards for Federal prosecutions are possible, too.

This bill would provide that—

First. An indictment or complaint shall be dismissed, even where the statute of limitations has not run, if there has been unnecessary delay in making the presentment or filing the information;

Second. Where the Department of Justice files a dismissal of an indictment, except where the defendant consents, it shall serve as a bar to subsequent prosecution;

Third. Where more than one indictment is involved, the person shall be brought to trial on the indictments in the order in which they were returned. When a case goes to trial on an indictment, the court in which earlier indictments are pending against the same defendant shall dismiss the earlier indictments with the effect of a judgment of not guilty:

Fourth. The defendant shall be tried on an indictment no later than 9 months after the indictment was filed, except that the court may extend the time on a showing of good cause; and

Fifth. A defendant who has been found guilty shall be sentenced no later than 60 days after judgment.

It is alleged by counsel for the Teamsters that some of Mr. Hoffa's difficulties have been characterized by untold delays, of a harrassing nature. The Tampa case has been going on for an extended period, with the result that four witnesses and a codefendant in that case are now deceased.

This bill would effectuate the defendant's right under the sixth amendment to a speedy trial.

Prosecuting authorities of the United States have frequently abused the rights of a defendant to a speedy trial, although that right is purportedly guaranteed by the Constitution of the United States. The States have, by experience, demonstrated that this right, if it is to be meaningful, must be enforced by legislative as well as judicial action. The proposed legislation benefits from the examples set by the States in this area and is the more necessary because the Federal courts have been less diligent than those of the States in enforcing this right.

Mr. Justice Frankfurter's opinion in *Ward* v. *United States*, declared:

"Nothing has disturbed me more during my years on the Court than the timespan, in so many cases that come here, between the date of an indictment and the final appellate disposition of a conviction. Such untoward delays seem to me inimical to the fair and effective administration of the criminal law. * * * I do not mean to imply criticism of any person, judge or court for what is a good illustration of the general leaden-footedness of criminal prosecutions. The fault lies with the habit of acquiescence in what I deem to be a reprehensible system."

It was the scandalous delays of such a reprehensible system that the sixth amendment was intended to avoid, but in fact this provision of the Bill of Rights has never been adequately effectuated by the national courts or the National Legislature.

Despite the constitutional provisions, for a long period of our history there would appear to have been a conflict over the question of power in the Federal courts to use the only sanction that is meaningful to preclude abuse of the defendant's right to a speedy trial: dismissal of the charge. As the court said in the leading case of *Frankel* v. *Woodrough*, 7 F. 2d 796, 798 (C.A. 8th 1925):

"The constitutions of most of the States have provisions similar to the sixth amendment, and many of the States have statutory definitions of the time or number of court terms within which criminal accusations must be tried. Such statutes provide usually for the discharge of accused unless the trial is within the limits so defined. The United States has no such statutory provisions, and we think an accused would not be entitled to a discharge even though he were denied a speedy trial within the meaning of the Constitution. His right and only remedy would be to apply to the proper appellate court for a writ of mandamus to compel trial."

There were contrary indications of the existence of the power of discharge. For example, *Ex parte Altman*, 34 F. Supp. 106, 103 (S.D. Calif. 1940), the court said:

"It is not questioned that the court, in the exercise of its jurisdiction, has the inherent power to order a dismissal for failure to prosecute. * * * We can conceive the anarchy which would result if the power to terminate a criminal proceeding for want of prosecution did not exist. Defendants might have prosecutions hang over their heads, like the sword of Damocles, for years, without an effort being made to bring them to trial. And yet, if the prosecutor should refuse to try them, and the court acquiesce, they would be at his mercy. The constitutional guarantee of speedy trial * * * would be brought to nought, if, when the court set a cause for trial and the prosecutor was not prepared to proceed, the court were powerless to dismiss it for failure to proceed diligently."

The purpose of my bill is to set such time limits as are set in various State statutes, to make them applicable to Federal prosecutions; and further to provide that if the Federal prosecutors did not comply with such time limits, the cases would be automatically dismissed.

It is true that in 1944, the "Federal Rules of Criminal Procedure," rule 48, made explicit the power of the district court to dismiss for want of prosecution. And there have been a few instances where this discretion has been exercised in favor of the defendant. However, the discretionary power in the courts is obviously inadequate as a reading of the annotations to rule 48(d) readily make appar-

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Remarks:

The Director may well be interested in the attached article by Fred Dutton entitled "Cold War Between the Hill and Foggy Bottom." Fred Dutton is Assistant Secretary of State for Congressional Affairs. This article did appear in THE NEW YORK TIMES of 15 September and was inserted in the CONGRESSIONAL RECORD by Senator McGovern.

STAT

John S. Warner

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